IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5283 OF 2005
IN
CRIMINAL APPEAL NO.5282 OF 2005

The State of Maharashtra ...Applicant
Vs.
Namdev Nivrutti Koli & Anr. ...Respondents

Smt S.D.Shinde, A.P.P. for the Applicant.
Shri A.K. Suryawanshi for the Respondent No.1.
Shri S.U.Dhakephalkar for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 01, 2006.

P.C.:

1. Heard the learned A.P.P. and the Advocates appearing for the Respondents. There is a delay of 781 days in filing Criminal Appeal. The Application is opposed by the Advocates appearing for the Respondents.

2. The impugned Judgment and Order was passed on 03rd April, 2003. An Application for certified copy was made on 04th April, 2003. The certified copies were ready on 23rd April, 2003 and were collected on 23rd May, 2003. The last date for filing an Application for grant of leave was 22nd July, 2003. It is stated that the District Government Pleader, Solapur submitted the papers to the Law and Judiciary Department on 08th February, 2005. The papers were received by the Law and Judiciary Departments on 24th

February, 2005 and Government Resolution was issued on 24th February, 2005. The papers were forwarded to the office of the Public Prosecutor, High Court on 28th February, 2005 and the Appeal was filed on 12th August, 2005.

3. The learned A.P.P. submitted that delay from February 2005 has been clearly explained in paragraph Nos.3 and 4 of the Application. She pointed out that so far as delay in the office of the District Government Pleader, Solapur is concerned, there is an affidavit filed by the Additional Public Prosecutor, Solapur which explains the delay.

4. The order dated 21st November, 2005 passed by this Court clearly records that there is no explanation offered for delay between May 2003 and February 2005. Time was granted to file better affidavit. In the affidavit the action taken against the concerned Prosecutor was also to be explained.

5. I have perused the affidavit of Shri Shaikh Inayatali AbdulKarim, Additional Public Prosecutor, Solapur. The only explanation for delay is in paragraph No.3 of the affidavit which reads thus:

"3. I say and submit that one Junior Clerk Shri S.V.Gade of DGP office Solapur has not send the said appeal proposal in time and thereafter when DGP asked the explanation to the said clerk about the same and he replied his explanation letter dated 25.02.2005 that he could not send the appeal proposal due to non-availability of postal stamps and also such official difficulty and thereafter, scrutiny of the papers by concerned DGP, submitted the papers to the Law & Judiciary Department, Mantralaya, Mumbai."

There is no explanation whatsoever for the delay between 23rd May, 2003 to February 2005 even in the said affidavit.

6. Thus, long delay from May 2003 to February 2005 in forwarding the papers to the Law and Judiciary Department is not at all explained. Though the delay after February 2005 has been explained in the Application, total delay of 781 days cannot be condoned. The Application is rejected.

JUDGE